



Town of Gates

1605 Buffalo Road
Rochester, New York 14624
585-247-6100

Meeting Minutes

April 11, 2016

MEMBERS PRESENT: Christine Maurice, Chairperson; Don Ioannone; Mary Schlaefter; Christopher Dishaw; Ken Cordero; Don Rutherford

MEMBER(S) NOT PRESENT: NA

ALSO PRESENT: Frank M. Cassara, Esq., Board Attorney
Steve Tucciarello, Councilman

A public hearing of the Gates Zoning Board of Appeals was called to order by **CHAIRPERSON MAURICE** at 7:30 p.m. at the Gates Town Hall. **CHAIRPERSON MAURICE** explained the purpose and procedure of the Zoning Board.

* * * * *

CHAIRPERSON MAURICE - Minutes from the March meeting to be accepted, there are no changes, additions or corrections.

MOTION - MR IOANNONE - Motion to accept the minutes from the March, 2016 meeting
Second - **MR CORDERO**

All in favor

Minutes from the March, 2016 meeting accepted.

THE APPLICATION OF PETER AND JOY DAY REQUESTING AN AREA VARIANCE FROM ARTICLE XIX, SECTION 190-94, TO CONSTRUCT AN ATTACHED GARAGE WHICH WILL ENCROACH INTO THE REQUIRED SIDE YARD SETBACK ON PROPERTY LOCATED AT 137 NORMANDALE DRIVE.

PETER AND JOY DAY - 137 Normandale Drive, Rochester, NY

CHAIRPERSON MAURICE - states that the sign was posted

PETER DAY – states that they currently have an attached garage on the back corner of property. It is on the corner of the lot and cuts into most of their usable yard space. On the corner of Howard Road and Normandale it is a fifty-foot setback on Howard and thirty-five on Normandale. They want a fenced in area for children to play in and would like to remove existing garage, but do not want to lose the value that the garage adds to the house. Want to build new attached garage further toward Normandale. In order to do that it would have to be a couple of feet into the side setback.

JOY DAY - with an actual door that leads into the house.

MR DAY - the current is not a very usable garage

MR DISHAW - when do you anticipate the removal of the existing garage?

MR DAY - this month or next month, remove first

MR DISHAW - you are going to get a permit?

MR DAY - yes, we will get a permit for the demolition and will remove the old one and build a new one

CHAIRPERSON MAURICE - is the new garage going to be the same color and siding

MR DAY - yes, it will match the house and look like the current garage, it will match the house roofing.

PUBLIC HEARING

No one in attendance

MOTION - MR DISHAW - approve with condition that existing garage be removed with required permits

This conditional approval is based upon the following findings of fact, which adequately demonstrated the standards applicable to granting an area variance, as defined by Town Law §267-B (3) (b):

1. The Applicants desired to erect a garage on the property commonly known as 137 Normandale Drive, Town of Gates, New York which will encroach into the required side yard setback as prescribed under the Town Code;
2. The proposed garage is to replace an existing structure which the Applicants intend, from their testimony at the hearing, to demolish prior to proceeding with the construction project;
3. The above referenced application was approved by the ZBA conditionally so long as the Applicants demolish the existing structure prior to the commencement of the new construction;
4. The requested area variance was not viewed as being substantial given the minimal encroachment into the side yard setback and that there appeared to be no other means for the Applicants to accomplish the desired result. Further, it was determined that the new construction would not detract from the character of the neighborhood;
5. This application involves Type II action under the State Environmental Quality Review Act (SEQRA) and requires no further proceedings under SEQRA.

Second - **MR KILEY**

CHAIRPERSON MAURICE – confirms the condition that the permit is obtained for the demolition of the garage

Member vote tally

Mr Ioannone - yes

Mr Kiley - yes

Mr Dishaw - yes

Mr Rutherford - yes

Mr Cordero -yes

Ms Schlaefel - yes

Chairperson Maurice - yes

All in favor

Variance approved.

THE APPLICATION OF M. CEM OSKUM (ATA POWER INC.) REQUESTING A USE VARIANCE FROM ARTICLE XXV, SECTION 19-140 TO CONDUCT USED CAR SALES IN A GENERAL BUSINESS ZONE ON PROPERTY LOCATED AT 2061 CHILI AVENUE.

HIDAYET INAN - 3 Newman Place, Rochester, NY, president of Ata Power, Inc

SALIH KAYA - 81 Corral Drive, Penfield, NY

ATTORNEY CASSARA - had conversation with M. Cem Oskum,

MR INAN - states that Mr. Oskum is not present and that he is the owner

ATTORNEY CASSARA - states that he spoke with someone, perhaps Mr. Oskum, or someone related to the applicant, after the March hearing. He called at the behest of the town building department due to the realization that he had not attended the initial hearing. Contacted to see if there was any further information needed. Indicated to Mr. Oskum, or his agent, that prior to the public hearing, there is an initial meeting of all of the Zoning Board members that despite the fact that it was not a public hearing, the conversations during the pre-meeting include discussion of the fact that they needed financial data to substantiate the application, was not as persuasive.

MR INAN - states that the business had been there for ten years. A garage does not work because it is only good enough for two bays. Tried to do other things like a U-Haul rental but did not have enough income to support. Tried for eight to ten years, had a couple of tenants, with a garage and auto repair shop, but they did not stay long. Purchased next door and knock it down and do used car lot. Talked to supervisor, said to talk to Zoning. Purchased house and want to knock it down.

CHAIRPERSON MAURICE - are you the person who went into the Town Board and filled out the application?

MR INAN - that was the owner

CHAIRPERSON MAURICE When he did that, he was given some guidance as to what the state requires in order to grant a use variance. All four criteria must be met. Have to prove unnecessary hardship for that property. Have to show that it cannot be used for any of the allowed uses of that zone. It is in a general business zone. There is a list of things that are allowed in a general business zone and what is allowed in a neighborhood business zone. This is between two extremes. New York State makes it difficult because they want the land to be used as it is zoned unless it has been proven to be impossible to use them in that manner. The first criteria is that the property is incapable of a reasonable rate of return if used for any of the allowed uses in the district. Need to see actual dollars and cents proof of that. First question is how did you come up with the price, so need to see comparables to calculate at \$550k. Assessed

value is at \$178k. Is that perhaps why someone who would use it as one of the approved uses has not bought? It seems to be a desirable location for a neighborhood type of business.

MR INAN - price came up when had had offers. Walgreens gave them that price. Tried to sell for \$300k and purchased next door for \$60k.

MR. KAYA - have been trying to sell for almost twenty years.

CHAIRPERSON MAURICE - how did you determine the \$550k to be your asking price?

MR INAN - Walgreens and a couple of big businesses are trying to spend \$900k for buying both places. They came up with this price but we do not know if that is the right price.

CHAIRPERSON MAURICE - property was listed with Nothnagle?

MR KAYA - Remax

MR DISHAW - how long have you owned the property?

MR INAN - twenty years

MR DISHAW - how much did you purchase the property for?

MR INAN - bought from foreclosure auction, \$50k and spent \$250K to clean up

MS SCHLAEFER - what did Remax say to list it for?

MR INAN - \$450K

MR KAYA - Trying to sell for twenty years, it is a gas station. I have a tailor shop in Westgate Plaza and have been there for thirty years. People are scared to buy a gas station. Offered \$450 but did not want to buy a gas station.

MR RUTHERFORD - would not pay \$550 if it is assessed at \$178k, so it looks like you are creating own financial hardship by not accepting a reasonable offer.

MR INAN - price is if a big company comes and bids something and then they want to mark it down.

MR KAYA - already spent over \$300K for the place and other place

MR RUTHERFORD - cannot consider the other place, it is creating your own financial hardship. The price is still doubled the assessed value. You are asking an unreasonable amount, creating the hardship

MR INAN - it has been almost twenty years with no reasonable offer for less than the amount

CHAIRPERSON MAURICE - seems that we cannot settle this without supporting documentation from an appraiser who would be able to tell us both a professional answer. The state says we need supporting documentation that would show us you are asking a reasonable price. Need supporting evincive of financial hardship situation showing that a business that would be on the approved list of businesses for that neighborhood business zone, why you have not been able to sell to them. Because it was a gas station, not appealing to a fast food restaurant in case there was contamination there, talked to fire marshal who said no, there is no evidence of that. The underground gas tank removed in 2013. There is nothing there that would prevent a neighborhood business from using that spot. There are two categories of financial hardship that must be met 1. Have to prove that land is not able to be used as zoned 2. Is the proposed use an appropriate use for that land?

CHAIRPERSON MAURICE - Character of neighborhood question- used car lots - not allowed in the town code in any zone. The only similar, closest use is in conjunction with new car sales. Only allowed in the factory, general industrial area. The town has characterized that use as industrial. This Board cannot re-write the code. The town has determined that used car lots are not within the plan for the town. Not with authority to override the town plan and grant that use. If this Board was to disregard that limit on authority to override the town's plan and consider approving it, because the most similar use was characterized as an industrial use, would not vote

to approve to put an industrial use in the middle of a general business district. Used car lot would not meet the character of the neighborhood.

MR INAN - lots on Chili Avenue

CHAIRPERSON MAURICE - if denied, you have the option to go to the Town Board to say the town code is wrong

MR KILEY - that is the only option to go to the Town Board and ask for a change in the code.

PUBLIC HEARING

No one in attendance

MOTION - MR IOANNONE - to deny the application based on that it does not meet the financial hardship criteria, does not meet the essential character of the neighborhood criteria and that it does not meet the present town code to have a standalone used car lot.

Based upon the information provided in support of the application the ZBA did not find that the necessary elements to approve the variance had been demonstrated. The denial was based upon the following:

- 1- The application did not demonstrate a financial hardship, particularly that the property could not yield a reasonable rate of return for a permitted use as the subject property is zoned or that the property was unique or physically different from the surrounding properties which are engaged in permitted uses;
- 2- That the application proposes a use which is contrary to the essential character of the neighborhood. The ZBA determined that the proposed variance as submitted would have an adverse effect upon the neighboring areas that surrounding the subject property;
- 3- That the proposed usage was contrary to the Town of Gates legislative intent when it enacted the Zoning Code. The ZBA held that given that the Town Code specifically prohibits standalone used car lots in any zone, it was beyond its administrative authority to amend or modify the Town Code to permit a use which is a prohibited use.

Second - **MR KILEY**

Member Vote Tally

Mr Ioannone - yes

Mr Kiley -yes

Mr Dishaw –abstains

Mr Rutherford - yes

Mr Cordero - yes

Ms Schlaefel - yes

Chairperson Maurice - yes

All in favor with one abstention

Variance denied

THE APPLICATION OF CAPRICORN VENTURES, LLC REQUESTING AN AREA VARIANCE FROM ARTICLE VIII, SECTION 190-36 TO CONSTRUCT AN ADDITION WHICH WILL ENCROACH INTO THE REQUIRED FRONT SETBACK; AND, TO ALLOW FOR PARKING WITHIN THE REQUIRED FRONT SETBACK ON PROPERTY LOCATED AT 115 FEDEX WAY.

CHAIRPERSON MAURICE - states that the application is not signed and asks applicant to sign before he leaves

ATTORNEY CASSARA - explains that we can proceed as the application is valid because the accompanied letter is signed

CHAIRPERSON MAURICE - states that the posting was proper as the sign the blew down and was replaced. Explains that this is really two applications, one for the parking in front and one for the addition. The Board will vote on two separate issues.

JIMMY DANIELS - MRB Group, 145 Culver Road, Suite 160, Rochester

THOMAS FROMBERGER - MRB Group, states that his partner cannot be here because he is in Japan.

MR DANIELS - requesting two variances, one for the front setback and one for the parking. Requesting to put an additional building on property. There are two functions for the building, Art Flame of Rochester does classes there for welding and making jewelry. Also have sponsorships through RIT and will serve as storage for supplies as well as classrooms. The current space is thirty-five percent and the building coverage is twenty-four percent. Will only be thirty-five percent with proposed addition. Under a quarter of an acre for the expansion. Gallina will be doing the construction as they own the property and have done the previous expansions.

CHAIRPERSON MAURICE - if we do approve, our approvals would only be allowing the potential and the Planning Board must approve the plan to go forward.

MR KILEY - have you ever considered two stories?

MR DANIELS - no, they have high ceilings and it is a two story building itself. They have robotic arms and such that need a lot of clearance.

MR FROMBERGER - partially for class room space so that students can spread out when using flammables.

CHAIRPERSON MAURICE - noticed that people have to park on street which is not in accordance with the town code. Parking will need to be expanded with expansion of building or it will increase the problem.

MR FROMBERGER - talked to Mike (owner) about this and the building expansion will allow a second entrance. Most students park along front for quick entry to building. With another entrance there will be more useable space.

MR RUTHERFORD - entrance will also be used for classes

MR FROMBERGER - yes, two access points

MS SCHLAEFER - asks if there will be a sign to show where to park

MR FROMBERGER - could put a sign there, had not heard any complaints about parking, but can post a sign about parking on street.

CHAIRPERSON MAURICE - also noticed that the new parking area does come up to the line so Planning Board will have to look at it also.

MR FROMBERGER - not opposed to parking, it is needed.

ATTORNEY CASSARA - seasonal use for parking, see appropriate sections for off street parking

MR RUTHERFORD - height of building?

MR FROMBERGER - thirty-five feet

MR RUTHERFORD - adjoining building height also?

MR FROMBERGER - yes

MR RUTHERFORD - on larger building?

MR FROMBERGER - similar materials will be used, the goal is to match the other building

CHAIRPERSON MAURICE - environmental forms included, did talk with town engineer, this is an unlisted action, so there is no action on SEQRA. The Zoning Board is the lead agency on this application and has determined.

CHAIRPERSON MAURICE – asks what is actual variance for the addition of the building. Requires thirty-five feet and have a ten to twenty-five foot variance.

MR FROMBERGER - did try to sell property a number of years ago which fell through and it is land locked in. He has pursued other avenues as it is tight, but wants to stay in this location.

MR RUTHERFORD - do you plan to have the trees taken out

MR FROMBERGER - yes, can relocate those. Shows on an aerial photo, off to side of property.

CHAIRPERSON MAURICE - Planning Board will work with them on that

PUBLIC HEARING

No one in attendance

CHAIRPERSON MAURICE - will vote on addition first.

MR KILEY - MOTION to accept the application for the addition

Second - **MR IOANNONE**

CHAIRPERSON MAURICE - fifteen foot variance for addition

Member Vote Tally

Mr Ioannone - yes

Mr Kiley -yes

Mr Dishaw - yes

Mr Rutherford - yes

Mr Cordero - yes

Ms Schlaefer - yes

Chairperson Maurice - yes

All in favor

CHAIRPERSON MAURICE - Parking in front yard question

MOTION - MR IOANNONE - Motion to approve variance to allow parking in the front yard.

1. The Applicant sought a variance from the Town of Gates Code Article VIII § 190-36 d to construct an expansion to an existing structure which will encroach into the required front setback on the southern lot line of the property commonly known as 115 FedEx Way, Town of Gates, New York;
 - a. The applicant satisfactorily demonstrated to the ZBA that there was no other reasonable means to achieve the desired request other than the relief sought within the application. The request was viewed as not substantial as the ZBA approved the minimal encroachment into the setback. Further it was determined that the setback variance was consistent with the general surroundings and neighborhood character.
2. The Applicant sought a variance from Town of Gates Code Article IV § 190-17 to permit parking in the front of the building intended to be constructed at 135 FedEx Way, Town of Gates, New York.
 - a. The ZBA determined that the permitted variance was consistent with the neighboring properties and accordingly would not detract from its character.

Further, the ZBA determined that the applicant demonstrated that there was no other feasible method to achieve the desired outcome and that need for the variance was not self-created given the required location of the intended structure.

Second - **MR DISHAW**

Member Vote Tally

Mr Ioannone - yes

Mr Kiley -yes

Mr Dishaw - yes

Mr Rutherford - yes

Mr Cordero - yes

Ms Schlaefer - yes

Chairperson Maurice - yes

All in favor

Variance approved.

CHAIRPERSON MAURICE - Both motions were approved based on that there is no harm to the character of the neighborhood and no alternate methods to achieve. Next step is to go to the Planning Board. Has applicant sign application.

MOTION to adjourn - **MR RUTHERFORD**

Second - **MR CORDERO**

All in favor.

* * * * *

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals